

Filed September 8, 1972

SEC 31 to 37

2:15 P.M.

STATE OF WISCONSIN
Office of the
COMMISSIONER OF SECURITIES

CERTIFICATE

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Harry W. Knight, Jr., Deputy Commissioner of Securities and custodian of the official records of this agency, hereby certify that the annexed rules, amendments thereto, and repeals thereof, all relating to state regulation of the offer and sale of franchises were duly approved and adopted by this agency on September 8, 1972.

I further certify that said copy has been compared by me with the original on file in this agency and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of this agency at Madison, Wisconsin, this 8th day of September, 1972.

Harry W. Knight, Jr.
DEPUTY COMMISSIONER OF SECURITIES

(SEAL)

Chapter SEC 31

DEFINITIONS

SEC 31.01 Definitions. (1) A franchisor shall be presumed to have "conducted business" within the meaning of section 553.22 (2), Wis. Stats., if twenty-five locations of such franchisor, whether operated by its employes or franchisees, are open or have been open for business to the public or are or have been marketing the product or service of the franchisor at the time of request for or assertion of the availability of an exemption.

(2) "Franchise fee" within the meaning of section 553.03 (7), Wis. Stats., may be determined by the commissioner to include, but not necessarily be limited to:

(a) Payment which is made before, upon, or after execution of an agreement to purchase, process, resell, or otherwise distribute a manufacturer's or licensor's goods, services, equipment, inventory or real estate.

(b) Payment referred to in subsec. (a) of this rule which is made in the form of a lump sum, installments, periodic royalties, profits, or cash flow, or is or may be reflected in the price of goods, services, equipment, inventory or real estate sold by the licensor to the distributor or licensee.

(3) "Material event or material change" within the meaning of section 553.31 (1), Wis. Stats., shall include, but not be limited to, the following:

(a) The termination, closing or failure to renew during any three-month period of (i) the greater of 1 percent or five of all franchises of a franchisor regardless of location or (ii) the lesser of 15 percent or two of the franchises of a franchisor located in the State of Wisconsin.

(b) Any change in control, corporate name or state of incorporation, or reorganization of the franchisor whether or not the franchisor or its parent, if the franchisor is a subsidiary, is required to file reports under section 12 of the securities exchange act of 1934.

(c) The purchase by the franchisor in excess of 5 percent of its existing franchises during any three-month period on a running basis.

(d) The commencement of any new product service or model line involving, directly or indirectly, additional investment by any franchisee or the discontinuation or modification of the

marketing plan or system of any product or service of the franchisor where the total sales from such product or service exceeds 20 percent of the gross sales of the franchisor on an annual basis.

(4) "Net Worth" within the meaning of section 553.22 (1), Wis. Stats., shall include those excesses of assets over liabilities which are recognized by generally accepted accounting principles consistently applied with the exception that; a) intangible assets in making the above computation shall include only the liquidation value of such intangibles, b) receivables of a franchisor due from its franchisees shall be stated with an appropriate asset offset or reserve for losses, and c) lump sum franchise fee receipts, or any portion thereof, shall include an appropriate offset under liabilities for accrued obligations to be performed in part or in whole as consideration for such fees.

(5) "Offers to sell," "sales" or "offers to purchase" or "purchases" are not made within this state within the meaning of section 553.59, Wis. Stats., in the case of any offers to sell or sales of or offers to purchase or purchases of a franchise to or by a resident of a foreign state, territory or country who is neither domiciled in this state to the knowledge of the seller or purchaser nor actually present in this state, if the franchise business being offered, sold or purchased is not to be operated, wholly or partially, in this state, and if the offer to sell or sale of or offer to purchase or purchase of such franchise is not in violation of any law of a foreign state, territory or country concerned.

(6) The commissioner shall, in any determination he shall make as to whether a marketing plan or system is deemed to be "prescribed in a substantial part by a franchisor," within the meaning of section 553.03 (4) (a) (1), Wis. Stats., include, but not be limited to, consideration of the following factors:

(a) Whether the representations made by the offeror or seller in connection with the offer to sell or sale of a franchise suggest or any agreement executed in connection with the offer to sell or sale of a franchise requires that the distributor or licensee operate a business which can purchase a substantial portion of its goods solely from sources designated or approved by the licensor.

(b) Whether the representations made by the offeror or seller in connection with the offer to sell or sale of a franchise suggest or any agreement executed in connection with the offer to sell or sale of a franchise requires that such distributor or licensee follow an operating plan, standard procedure, or training manual or its substantial equivalent promulgated by the licensor in the operation of the licensed business, violations of which may, under the terms of the agreement, permit the licensor to terminate the agreement.

(c) Whether the representations made by the offeror or seller in connection with the offer to sell or sale of a franchise suggest or any agreement executed in connection with the offer to sell or sale of a franchise requires that the distributor or licensee be limited as to the type, quantity, and/or quality of any product or service the distributor or licensee may sell or limits the distributor or licensee as to the persons or accounts to which he may sell the licensors product or service.

(d) Whether the provisions of the agreement permitting the licensor to terminate the agreement, to buy back the distributor or license rights assigned by the agreement, or to refuse to renew the grant of such distributor or license rights are such as to operate or be exercisable substantially at the will of the licensor, or

(e) Whether the representations made by the offeror or seller in connection with the offer to sell or sale of a franchise suggest or any agreement executed in connection with the offer to sell or sale of a franchise requires that the licensor aid or assist the distributor or licensee in training, obtaining locations or facilities for operation of the franchisee's business or in marketing the franchisor's product or service.

(7) "Published in this state" within the meaning of section 553.59 (4), Wis. Stats., may be determined by the commissioner to include, but not be limited to, advertising circulated for particular regional use within this state by residents of this state although printed outside of this state and mailed to residents of this state located at a Wisconsin address.

(8) The commissioner shall, in any determination he shall make as to whether a marketing plan or system of a franchisee is "substantially associated with the franchisor's business and trademark, service mark, trade name, logotype, advertising or other commercial symbol" within the meaning of section 553.03 (4) (a) (2), Wis. Stats., include, but not be limited to, consideration of the following factors:

(a) Whether the identification of the licensor's business or utilization of his trademark, service mark, trade name, logotype, advertising or other commercial symbol is utilized either by the licensor or the licensee to enhance the chances of licensee's success in respect to licensee's transactions with persons dealing in or purchasing licensor's product or service.

(b) Whether the agreement provides for the distributor or licensee to contribute a portion of his operating revenue to the licensor for advertising expense or representations made by the licensor or his agents or employes suggest payment

by the licensee for advertising conducted managed or prescribed by the licensor.

(9) The commissioner shall, in any determination he shall make as to whether a marketing plan or system of a manufacturer, licensor, or a franchisor is a "bona fide wholesale transaction" or a series thereof within the meaning of section 553.03 (7) (a), Wis. Stats., include, but not be limited to, consideration of the following factors:

(a) Whether, in connection with an agreement to process, resell or otherwise distribute a manufacturer's or licensor's product or service, consideration in purchase transactions thereunder is solely for the payment of goods, services, equipment, inventory or real estate and such consideration does not reflect, in part or in whole, payment for the right to continue such purchase transactions or business whether on the same or different terms than those stated in the subject agreement.

(b) Whether, in connection with an agreement to process, resell or otherwise distribute a manufacturer's or licensor's product or service, a purchase of goods, services, equipment, inventory or real estate is required in connection with the subject agreement.

(c) Whether, in connection with an agreement to process, resell or otherwise distribute a manufacturer's or licensor's product or service, the cost of goods, services, equipment, inventory, or real estate thereunder to the seller thereof is reasonably related to the price of the same to the distributor or licensee, taking into account the respective circumstances in the market of both the seller and buyer thereof.

(10) "Timely" within the meaning of section 553.41 (4), Wis. Stats., shall mean at least 48 hours prior to the execution of an agreement or the taking of consideration constituting the sale of a franchise.

Chapter SEC 32

EXEMPTION AND REGISTRATION OF FRANCHISES

SEC 32.01 Requirement for exemption of franchises.

Franchisors desiring to offer to sell or sell their franchises in this state pursuant to the exemption provided by section 553.22, Wis. Stats., shall, prior to making such offers to sell or sales in this state, (1) advise the commissioner of their plans to offer to sell or to sell franchises in the State of Wisconsin, (2) include in such advice a showing of qualifications under section 553.22 (1) and (2), Wis. Stats., and Wis. Adm. Code SEC 31.01 (4) and 31.01 (1) respectively, and (3) shall file with the commissioner a copy of any advertising and offering material which is used by the franchisor as the basis of information required to be disclosed under section 553.22 (3), Wis. Stats., to prospective investors, together with a consent to service of process as required by 553.22 (4), Wis. Stats.

SEC 32.02 Transitional measures with regard to registration of franchises.

(1) In connection with offers to sell or sales of franchises in this state;

(a) All applications for registration under section 553.26, Wis. Stats., filed on or after September 18, 1972, but before October 31, 1972, shall become effective 30 days after the date of filing of such application for registration unless a stop order or other order under section 553.28, Wis. Stats., with respect to such application has been issued by the commissioner.

(b) All applications for registration filed under section 553.26, Wis. Stats., between November 1, 1972, and November 16, 1972, shall become effective on December 1, 1972, unless a stop order or other order under section 553.28, Wis. Stats., with respect to such application has been issued by the commissioner.

(2) Nothing in this Rule shall, during the periods specified in subsection (1) of this rule, prevent the commissioner from exercising his authority under section 553.28, Wis. Stats., for violations of provisions in this chapter other than sections 553.22, 553.23, 553.26 and 553.27, and, with respect to offers to sell and sales of franchises exempted under sections 553.25, Wis. Stats., under this rule or under Wis. Adm. Code section SEC 32.06, from exercising his authority under section 553.28 (1) (a), (b), (c), (e), (f) or (h), Wis. Stats.

SEC 32.03 Periodic reports required for exempt franchisors.

(1) Franchisors, their agents, or representatives offering to sell or selling franchises in this state under sections 553.22, 553.23 or 553.25, Wis. Stats., shall file with the commissioner within a period of 120 days from the last date of each of their fiscal years a copy of their Annual Report and audited certified financial statements or unaudited financial statements prepared by a certified public accountant if the requirement for submission of audited financial statements has been waived by the commissioner under Wis. Adm. Code, section SEC 35.05 (1) (b) (ii).

(2) Franchisors, their agents, or representatives offering to sell or selling franchises in this state under section 553.22 or 553.23, Wis. Stats., shall file with the commissioner within a period of 120 days from the last date of each of their fiscal years graphic representations of all exclusive areas sold to franchisees in Wisconsin in the last fiscal year.

SEC 32.04 Material events or material changes affecting exempted franchisors and their franchises. Franchisors whose franchises are exempted under sections 553.22, 553.23, or 553.25, Wis. Stats., shall be required, as a condition of maintenance of such exemption after confirmation thereof as required by Wis. Adm. Code, section SEC 32.01, to notify the commissioner in writing within 30 days after the happening of any material event or material change within the meaning of Wis. Adm. Code, section SEC 31.01 (3), affecting the exempted franchises or the franchisor.

SEC 32.05 Exemption Information Filings. If any information is reasonably required by the commissioner to establish an exemption under sections 553.22, 553.23, or 553.25, Wis. Stats., and such request is communicated by the commissioner to the applicant or interested person in any form within 10 days of the date of receipt by the commissioner of such application, the effective date of any such exemption will not commence until the information so required is received by the commissioner and a reasonable period of time, not to exceed 10 days thereafter, shall have expired, unless a shorter period of time is permitted by the commissioner.

SEC 32.06 Exemptions by the Commissioner.

(1) The following transactions, in addition to those transactions exempted under Wis. Adm. Code section SEC 32.02, shall, pursuant to section 553.25, Wis. Stats., be exempted from section 553.21, Wis. Stats;

(a) Any offer to sell or sale by a governmental entity of a franchise for cable telecommunications rights except offers to sell and sales of such franchises where a) the franchisee of a governmental entity offering or selling such rights sells or offers rights to participate in such a business or a

prospective business of a cable telecommunications nature, or
b) a franchisee or prospective franchisee of a governmental entity advertises, offers to sell or sells an interest in such franchise or prospective franchise which may consist of, but not be limited to, access to the use of existing facilities, rights granted by the governmental entity, or rights or facilities to be acquired. Any offer to sell or sale of a franchise which is within the scope of this particular exemption shall not be subject to the provisions of Wis. Adm. Code section SEC 34.02.

(b) Any offer to sell or sale of a franchise which includes payment by a person for the right to participate in a distribution or marketing plan where such payment, computed on an annual basis, does not exceed \$100 in excess of the bona fide wholesale price for such product or service in wholesale transactions.

(c) Any offer to sell or sale of an interest in a franchise by a person, whether or not a franchisor, a franchisee, a subfranchisor or a subfranchisee, to any person.

(2) Unless otherwise specified, nothing in this rule shall be construed so as to make inapplicable the provisions of Wis. Adm. Code section SEC 34.02 nor shall this rule prevent the commissioner from exercising his authority under sections 553.28 (1) (a), (b), (c), (e), (f) or (h), Wis. Stats.

SEC 32.07 Prospectus or offering circular requirements.

(1) As a condition of registration under section 553.21, Wis. Stats., a prospectus or offering circular meeting the requirements of sections 553.26 (1) through 553.26 (22), Wis. Stats., shall be sent or given to each person to whom an offer is made at least 48 hours prior to the consummation of any franchise agreement or the taking of any consideration or investment by the franchisor or any affiliate thereof or their agents or representatives, including consideration for payment by the franchisee for any property (tangible or intangible, real or personal) to be utilized or required to be utilized under the franchise.

(2) The outside front cover of the prospectus, unless otherwise permitted by the commissioner, shall contain substantially the following information:

(a) Name and location of franchisor and its type of organization.

(b) Designation of franchises offered.

(c) Franchise fee or explanation for the absence thereof including a short summary of required capital and equipment inventory or real estate purchases to commence the franchise business.

(d) The name of the franchise sales organization if other than the franchisor.

(e) The date of the prospectus.

(f) The following statement in bold face type:

THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE WISCONSIN FRANCHISE INVESTMENT LAW. SUCH REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER OF SECURITIES OF WISCONSIN OR A FINDING BY THE SAME COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.

THE WISCONSIN FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WHICH IS SUBJECT TO REGISTRATION WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE INVESTOR, AT LEAST 48 HOURS PRIOR TO THE EXECUTION BY THIS INVESTOR OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST 48 HOURS PRIOR TO THE RECEIPT OF ANY CONSIDERATION, WHICHEVER OCCURS FIRST, A COPY OF THIS PROSPECTUS, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE. THIS PROSPECTUS CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR AN UNDERSTANDING OF ALL RIGHTS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.

(g) A sample of the business trademark, patent, brand, logotype, name or commercial label or symbol utilized by the franchisor under which his products or services are marketed and under which the franchisee will conduct his business."

(3) The body of the prospectus or offering circular shall state substantially the following information in the following sequence;

(a) With regard to the franchisor: set forth in summary form;

(i) The name of the franchisor, the name under which the franchisor is doing or intends to do business and the name of any parent or affiliated company that will engage in business transactions with the franchisee or with whom the franchisees will be required to deal as a condition of the franchise agreement, and

(ii) The franchisor's principal business address and the name and address of its agent in the State of Wisconsin authorized to receive process, and

(iii) The business form of the franchisor, whether corporate, partnership or otherwise, and the form of the franchisee's business, if any, required under the terms of the franchise agreement, and

(iv) The prior business experience of the franchisor including the length of time the franchisor has conducted a business of the type to be operated by the franchisee, has granted franchises for such businesses, has granted franchises in other lines of businesses and, if so, a description of these other lines of businesses and the number of franchises that the franchisor has sold of the type offered, both in Wisconsin and the United States, as of the date of the prospectus.

(v) The existence of any litigation naming the franchisor or any affiliate thereof as a party, including but not limited to, class actions and a summary of the allegations made in such litigation together with a statement of opinion of counsel to the franchisor of the position of the franchisor with respect to such allegations.

(b) With regard to the identity of and business experience of persons affiliated with the franchisor: set forth in summary form; the officers, directors, trustees and/or general partners, as the case may be, and the general managers, principal executives and other persons who will be charged with the business activities and operations of the franchisor and their present titles and offices together with their social security numbers, birthdates and principal occupations during the last five years, and state whether, as referred to in section 553.26 (5), Wis. Stats., any such person has been subject to a criminal conviction, civil judgment, relevant administrative order, or is subject to any injunctive action.

(c) With regard to the fees and charges payable by the franchisee: set forth in summary form;

(i) The franchise fee or initial payment, if any, charged upon the signing of the franchise agreement or the manner including, but, not limited to, royalties, rental payments, or prices for goods, services, equipment inventory or real estate, by which compensation to the franchisor or affiliates thereof will be charged over a period of time, and

(ii) Any other charges associated with preparation for entrance into the business of the franchisee whether or not a franchise agreement or other contract must be executed prior thereto, and

(iii) Any payments or fees other than franchise fees, including royalties and payments or fees which the franchisor collects in whole or in part on behalf of an independent third party or parties, and which the franchisee must make by way of a goods, services, equipment, inventory, or real

estate purchase for the purpose of going into business as a franchisee, and

(iv) The extent to which franchisees will be required to provide funds or will be obligated to repay loans incurred for construction of business facilities, installation of fixtures and equipment, initial inventory and working capital for operating expenses.

(d) With regard to renewal, termination, and assignment rights of the franchisee under the franchise agreement: set forth in summary form;

(i) The term of the franchise and the conditions under which the franchise agreement may be renewed or extended, and

(ii) The conditions under which the franchise agreement may be terminated, modified or renewal refused with a statement in bold face, if the case may be, that no specification of cause is required for exercise by the franchisor of the right of termination or of failure to renew by virtue of the provisions of the franchise agreement, and

(iii) The terms under which the franchise agreement or an interest therein may be sold or assigned by the franchisee either to the franchisor or to a third party or purchased by the franchisor, whether or not by right of first refusal or at the option of the franchisor and, in the case of the latter, whether or not there will be an independent appraisal of the franchise and recognition of goodwill or other intangibles associated therewith in such repurchase price to be given to the franchisee upon purchase by the franchisor.

(e) With regard to obligations of the franchisee or subfranchisors thereof to purchase items from designated sources: set forth in summary form;

(i) The obligations of the franchisee or subfranchisor, whether arising by the terms of the franchise agreement or by other device or practice, to purchase from the franchisor or his designee or affiliate services, supplies, products, fixtures or other goods, equipment, inventory or real estate relating to the establishment or operation of the franchise business together with a description thereof and a statement or schedule of the franchisor's cost where a similar product is reasonably available elsewhere and comparative cost data for such similar product is available and the cost to the franchisee together with the prevailing market prices, if any, for such products and, if none, a statement explaining the absence of such market price, and

(ii) With regard to such required purchases, a description of the frequency and the amounts thereof.

(f) With regard to limitations on goods and services which the franchisee may offer to his customers: set forth in summary form; a statement as to whether, by the terms of the franchise agreement or by other device or practice, the franchisee is limited in any way in the goods or services which he may offer to his customers.

(g) With regard to the terms of purchase of the franchise: set forth in summary form; the terms and conditions of any financing arrangements offered directly or indirectly by the franchisor or its agent or affiliate and any past or present practice or any intent of the franchisor, its agent or affiliate to sell, assign or discount to a third party any note, contract or other obligation arising out of the franchise sale transaction, and the identity of such transferees.

(h) With regard to other franchises of the franchisor: set forth in summary form; the number of franchises of a type substantially similar to those offered presently operating, the number of such franchises operating in Wisconsin, and the number of such franchises proposed to be sold in the State of Wisconsin for the one-year period following the date of the prospectus.

(i) With regard to arrangements with public figures or celebrities and their endorsements: describe in summary form;

(i) all compensation or other benefit given or promised to a public figure or celebrity arising, in whole or in part, from the use of the public figure in the name or commercial symbol of the franchise or the endorsement or recommendation of the franchise by the public figure in advertisements, and

(ii) the ability of the franchisee to use the name of a public figure or celebrity in his promotional efforts and advertising.

(j) With regard to an exclusive or nonexclusive area or territory given to the franchisee: state or describe in summary form; whether franchisees or subfranchisors receive, with regard to the marketing of any product or service, an exclusive area or territory for distribution. If such exclusive area or territory is granted, give a graphic representation thereof with sufficient clarity to permit visual comprehension thereof by the prospective franchisee; if an exclusive area is not granted, set forth in the offering prospectus the Wisconsin locations for which he has sold identical or similar franchises.

(k) With regard to obligations of the franchisor: describe in summary form; the specific obligations required to be performed by the franchisor both prior to the opening of the franchise business and during the operation of the franchise business and whether such obligations must be completed by certain dates or within a specified time

period and, in the absence of such performance, the right of the franchisees, if any, to any refund of monies paid or any other rights to rescind the franchise sale or other transactions related thereto.

(1) With regard to financial statements of the franchisor: set forth in the manner appropriate for certified financial statements with audit and opinion, the financial statements required by section 553.26 (7), Wis. Stats., in such form as required by Wis. Adm. Code, section SEC 35.05. If the need for audited statements is waived by the commissioner under Wis. Adm. Code section SEC 35.05 (1) (b) (i), set forth the unaudited statements in accordance with Wis. Adm. Code section SEC 35.05 (2).

(m) With regard to estimated or projected operations of franchisees: set forth in summary form; wherever the use of projections or estimates are made, a statement of the basis and data upon which such projections or estimates are based and a statement as to the extent to which such projections or estimates relate to other franchisees of a substantially similar type in the State of Wisconsin, to other franchisees of a substantially similar type in the United States, and a statement of whether any portion of the bases for such projections or estimates relate to the performance of any franchisees other than that of a substantially similar type offered.

(n) Such other information, as the commissioner may permit or reasonably require or, if of a reasonable amount, data that the franchisor may desire to present under section 553.26 (21), Wis. Stats., but with respect to the latter, such information shall be stated separately and immediately after that required in subsections (a) through (m) of this rule.

(4) The prospectus shall contain a full disclosure of all material facts relating to the franchisor and its affiliates and the offering and sale of the registered franchises.

(5) Pursuant to any renewal of a registration under section 553.30, Wis. Stats., or to any amendment to a registration statement under section 553.31, Wis. Stats., the prospectus and its contents must reflect current operations of the franchisor and its franchisees. Financial statements required to be submitted under Wis. Adm. Code, section SEC 32.08, must be dated within six months of the date of the expiration of the registration statement to be renewed or within six months of the date of the proposed amendment to the registration statement. Information about principals in the business of the franchisor and items other than financial statements required to be disclosed under section 553.26, Wis. Stats., shall be current to within three months of the same dates.

SEC 32.08 Renewal or amendment of registration statements.

(1) A registration renewal statement under section 553.30, Wis. Stats., shall be filed on a form prescribed by the commissioner not less than 15 days prior to the end of one year from the effective date of the registration statement, and shall be accompanied by the latest form of prospectus or offering circular, meeting the requirements of Wis. Adm. Code, section SEC 32.07, used in connection with the sale of the registered franchises together with a balance sheet of the franchisor as of a date within 120 days of such proposed renewal date and an income statement and analysis of surplus of the franchisor for its last fiscal year preceding the date of such balance sheet and for the period between the close of the franchisor's last fiscal year and the date of such balance sheet, all meeting the requirements of Wis. Adm. Code, section SEC 35.05. If no stop order or other order under section 553.28, Wis. Stats., is in effect, renewal of the registration statement becomes effective on the day on which the prior registration statement expires or at such earlier time as the commissioner determines.

(2) An application to amend a registration statement under section 553.31, Wis. Stats., shall be filed on a form prescribed by the commissioner at any time during the effectiveness of a registration statement under section 553.29, Wis. Stats. The commissioner may take, upon such filing, action appropriate in the public interest or for the protection of investors under sections 553.26 (20) or 553.28, Wis. Stats. The registration statement or registration renewal statement filed with the commissioner remains in effect while an application to amend such registration statement or registration renewal statement is being reviewed by the commissioner. If the commissioner does not require additional information pursuant to section 553.26 (20), Wis. Stats., or if no stop order or other order under section 553.28, Wis. Stats., is in effect, the amendment to the registration statement or registration renewal statement becomes effective 15 days after receipt by the commissioner of the application to amend the registration statement or registration renewal statement or at such earlier time as the commissioner determines. In the case of an application for registration or a registration renewal statement, the effective date of the original application for registration or, as the case may be, registration renewal statement shall remain the date from which time is measured for purposes of renewal of registration statements under Wis. Adm. Code section SEC 32.08 and the filing of periodic reports under Wis. Adm. Code section SEC 32.09.

(3) In the absence of the filing of a registration renewal statement under section 553.30, Wis. Stats., or of an application to amend a registration statement under section 553.31, Wis. Stats., the commissioner may by order extend the offering period of a registration statement subject to conditions as he may prescribe for the protection of investors.

SEC 32.09 Periodic reports for franchisors or franchise registrants.

(1) Each franchisor or registrant of franchises under section 553.29 (2), Wis. Stats., shall file with the commissioner quarterly commencing 90 days after the effective date of its registration statement a report, on a form prescribed by the commissioner, specifying the number of franchises sold in the state pursuant to such registration statement, the selling prices of each of such franchises, and graphic representations of the exclusive areas, if any, sold to such franchisees.

(2) Each franchisor or registrant of franchises under section 553.29 (2), Wis. Stats., shall file with the commissioner such additional reports of sales of franchises and financial statements as may be specified by order, and shall furnish the commissioner, pursuant to section 553.31 (1), Wis. Stats., with written notice within 30 days after the happening of any material event or material change affecting the franchisor or the franchises registered.

SEC 32.10 Registration proceedings. If, in connection with the examination of any application for registration under section 553.26, Wis. Stats., any information is reasonably required by the commissioner prior to the effective date of an application for registration under section 553.29 (1), Wis. Stats., and such request is communicated by the commissioner to the applicant or interested person in any form within the 15-day period specified in section 553.29 (1), Wis. Stats., which period shall commence on the date of receipt by the commissioner of the application for registration, the filing of such an application for registration is made when the additional information so required is received by the commissioner.

SEC 32.11 Underscoring changes. If any registration renewal statement under section 553.30, Wis. Stats., or any application for amendment to a registration statement under section 553.31, Wis. Stats., alters the text of the prospectus or offering circular, or of any item, exhibit or other document previously filed as a part of the application for registration under section 553.26, Wis. Stats., the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

SEC 32.12 Signing of applications. An application for registration under section 553.26, Wis. Stats., a registration renewal statement under section 553.30, Wis. Stats., or an application to amend a registration statement under section 553.31, Wis. Stats., should be signed by an officer or general partner of the applicant, as the case may be, however, it may be signed by another person holding a power of attorney for such purposes from the applicant and, if signed on behalf of the applicant pursuant to such power of attorney, should include, as an additional exhibit, a copy of said power

of attorney or a copy of the corporate resolution authorizing the person signing to act on behalf of the applicant.

SEC 32.13 Escrow of franchise fees and other consideration.

(1) In a case where the applicant has failed, within the meaning of section 553.27 (2), Wis. Stats., to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training or other items included in the offering, the commissioner may impose, as a condition to the registration of a franchise offering, an escrow of the franchise fees and other funds paid by the franchisee or subfranchisor until no later than the time of opening of the franchise business.

(2) When an escrow condition is imposed under subsection (1) of this rule, one hundred percent of franchise fees and all other funds paid by the franchisees or subfranchisors for any purpose shall within 48 hours of the receipt of such funds, be placed with the depository until the commissioner takes further action pursuant to subsection (a) of this rule. All checks shall be made payable to the depository.

(3) When an escrow condition is imposed under subsection (1) of this rule, the franchisor shall deliver to each franchisee or subfranchisor, a purchase receipt, in a form approved by the commissioner. Such purchase receipts shall be consecutively numbered and prepared in triplicate and the original given to the franchisee or subfranchisor, the first copy to the depository together with the payment received and the second copy to the franchisor.

(4) Funds subject to an escrow condition imposed under subsection (1) of this rule, shall be placed in a separate trust account with a national bank located in Wisconsin or a Wisconsin bank or trust company. A written consent of the depository to act in such capacity shall be filed with the commissioner.

(5) (a) The commissioner shall authorize the depository to release to the franchisor such amounts of the escrowed funds applicable to a specified franchisee (or subfranchisor) upon a showing that the franchisor has fulfilled its obligations under the franchise agreement or that for other reasons the escrow is no longer required for the protection of franchisees.

(b) An application for an order of the commissioner authorizing the release of escrowed funds to the franchisor shall be verified and shall contain;

(i) A statement of the franchisor that all required proceeds from the sale of franchises have been placed with the depository in accordance with the terms and conditions of the impound or escrow condition;

(ii) A statement of the depository signed by an appropriate officer setting forth the aggregate amount of escrow funds placed with the depository;

(iii) The names of each franchisee (or subfranchisor) and the amount held in the escrow for the amount of each franchisee (or subfranchisor);

(iv) A showing that the franchisor, with respect to each franchise the funds for which are sought to be released, has completely performed obligations, cited by reference to the franchise agreement and its provisions, to provide real estate, improvements, equipment, inventory, training or other items, as the case may be; and

(v) Such other information as the commissioner may reasonably require.

SEC 32.14 Surety bond in lieu of escrow. In lieu of the imposition of an escrow condition under section 553.27 (2), Wis. Stats. and Wis. Adm. Code section SEC 32.13, a franchisor may post a surety bond in such amount as shall be required by the commissioner. Such bond shall be issued by a corporate surety authorized to transact business in the State of Wisconsin, conditioned upon the completion by the franchisor of his obligations under the franchise contract to provide real estate, improvements, equipment, inventory, training or other items included in the offering.

Chapter SEC 33

DENIAL, SUSPENSION OR REVOCATION OF EXEMPTIONS OR OF REGISTRATION

SEC 33.01 Incomplete registration statements. Any application for registration under section 553.26, Wis. Stats., registration renewal statement under section 553.30 Wis. Stats., or application to amend a registration statement under section 553.31, Wis. Stats., which a registrant fails to complete within one year from the date of filing thereof shall be deemed materially incomplete under section 553.28 (1) (a), Wis. Stats., and the commissioner may issue a stop order denying effectiveness to such application or registration renewal statement.

SEC 33.02 Federal laws affecting franchise operations. The commissioner may issue a stop order denying effectiveness to any application for registration of franchises under section 553.26, Wis. Stats., or suspending or revoking the effectiveness of any exemption under sections 553.22 or 553.23, Wis. Stats., or of any registration statement under section 553.26, Wis. Stats., when he finds that the sale of franchises pursuant to such application, exemption, or registration statement is or would be in violation of the Sherman Act, the Clayton Act, the Federal Trade Commission Act, the Robinson-Patman Act, the Securities Act of 1933, or the Securities Exchange Act of 1934, (15 USC sections 1-7; 15 USC sections 12-27; 15 USC sections 41-51; 15 USC section 13; 15 USC section 77a-77aa; 15 USC sections 77b-77e, 77j, 77k, 77m, 77o, 77s, 78a-78o, 78o-3, 78p-78hh, respectively.)

SEC 33.03 State laws affecting franchise operations. The commissioner may, pursuant to section 553.28, Wis. Stats., issue a stop order denying effectiveness to any application for registration of franchises under section 553.26, Wis. Stats., or suspending or revoking the effectiveness of any exemption under sections 553.22 or 553.23, Wis. Stats., or of any registration statement under section 553.26, Wis. Stats., when he finds that the sale of franchises pursuant to such application, exemption, or registration statement is or would be in violation of the Wisconsin Marketing; Warehouses; Trade Practices Law, the Wisconsin Trusts and Monopolies Law or the Wisconsin Uniform Securities Law. (Chapter 100 of the Wisconsin Statutes, Chapter 133 of the Wisconsin Statutes, or Chapter 551 of the Wisconsin Statutes, respectively).

Chapter SEC 34

FRAUDULENT AND PROHIBITED PRACTICES

SEC 34.01 Application of proceeds. A seller of franchises exempt from registration under sections 553.22, 553.23, or 553.25, Wis. Stats., or registered under section 553.21, Wis. Stats., or any person who is an officer, director or controlling person of such seller is deemed to employ a "fraudulent and prohibited practice" within the meaning of section 553.41, Wis. Stats., and a "false, fraudulent and deceptive practice" within the meaning of section 553.58 (1), Wis. Stats., if such person applies or authorizes or causes to be applied any material part of the proceeds from the sale of such franchises in any material way contrary to the purpose specified in advertising or oral representations utilized in connection with the offer to sell or sale of such franchise or in the prospectus required to be utilized in connection with the offer to sell or sale of franchises registered under section 553.21, Wis. Stats., and, in any event, for a purpose not reasonably related to the business of the franchisor, as described in the advertising, oral representations, prospectus or any contract related to the offer or sale of such franchise.

SEC 34.02 False, fraudulent and deceptive practices.

In connection with an offer to sell or sale of a franchise in this state, any person authorizing, aiding in, or causing such offer to sell or sale of franchises shall be deemed to be engaging in a "false, fraudulent or deceptive practice" within the meaning of section 553.58 (1), Wis. Stats., and in a "fraudulent and prohibited practice" within the meaning of section 553.41, Wis. Stats., without limiting the authority of the commissioner under sections 553.28 or 553.55, Wis. Stats., or the authority of the department of justice or of any district attorney under section 553.54, Wis. Stats., if he:

(1) makes or causes to be made oral or written statements or representations with regard to:

(a) The exclusivity of the franchise rights granted to the franchisee without disclosure of the exact nature thereof,

(b) The sources from which franchisees must purchase their goods, services, equipment, inventory or real estate pursuant to the franchise agreement without disclosure of the affiliation, if any, between such sources and the franchisor and the relationship of the prices at which franchisees must make such purchases to the prevailing market price, if any, for such goods, services, supplies, equipment, inventory or real estate,

(c) Industry wide total income representations or a portion thereof applicable to the prospective franchisee, whether actual or projected, for the product or service marketed by the franchisor when not accompanied by disclosure of the relationship, if any, of such representations to the franchisor's and its franchisee's actual income experiences.

(d) Projections of operations or of income or gross or net profits capable of being obtained by operation of the franchise by the franchisee without selecting representative data for the basis for use of the same under sections 553.22 (3) (m) or 553.26 (16), Wis. Stats., and without;

(i) In the case of a franchise of a type substantially similar to other franchises sold by the franchisor a majority of which have been operational for greater than one year the disclosure, orally at the same time or clearly and conspicuously immediately adjacent to any such written representation, of the following:

"REPRESENTATIONS ARE BASED ON THE AVERAGE ACTUAL EARNINGS OR PROFITS OF ALL OUR FRANCHISEES IN OPERATION DURING AT LEAST A PORTION OF THE MOST RECENT FISCAL YEAR. THESE FIGURES SHOULD NOT BE CONSIDERED AS POTENTIAL EARNINGS OR REPRESENTATIONS OF PROFITS OF ANY SPECIFIC FRANCHISEE"; or

(ii) In the case of each franchise of a type substantially similar to the one being offered to the prospective franchisee and which has been operational for greater than one year the disclosure, orally at the same time or clearly and conspicuously immediately adjacent to any such written representation, of the following:

1. The name and address of the franchisee whose earnings or profits are being represented and the circumstances under which such earnings were made; and
2. The percentage of franchisees which the represented franchise equals; and
3. The average actual earnings or profits of all franchisor's substantially similar franchisees in operation during at least a portion of the most recent fiscal year together with the disclaimer called for in Wis. Adm. Code section SEC 34.02 (1) (d) (i); and
4. THIS REPRESENTATION IS BASED ON THE ACTUAL EARNINGS OR PROFITS OF THE NAMED FRANCHISEE DURING THE PERIOD ABOVE STATED. THESE FIGURES SHOULD NOT BE CONSIDERED AS POTENTIAL EARNINGS OR EARNINGS CAPABLE OF BEING ATTAINED BY ANY OTHER FRANCHISEE.

(iii) In the case where there have been no franchisees of a type substantially similar to that offered and sold by the franchisor which were operational during the 12-month period preceding the date of such representation or where less than a majority thereof sold have become operational without disclosure, orally at the same time or clearly and conspicuously immediately adjacent to such written representation, of the following:

"ALL REPRESENTATIONS OF POTENTIAL EARNINGS OR PROFITS ARE MERELY ESTIMATES. NO FRANCHISES HAVE BEEN IN OPERATION LONG ENOUGH TO INDICATE WHAT, IF ANY, ACTUAL EARNINGS OR PROFITS MAY RESULT,"

(e) The actual income experiences of the franchisor or its franchisees without stating orally at the same time that certified audited financial statements are or are not available and if so, from what source or disclosing in writing immediately adjacent to such written figures the certified financial statements of the franchisor and its franchisees or a summary thereof, whether certified or unaudited, in the form required by Wis. Adm. Code, section SEC 35.05,

(f) The net worth of the franchisor and its affiliates without disclosing orally at the same time whether and from where certified audited or unaudited financial statements of the franchisor are obtainable or, with regard to written representations, disclosing immediately adjacent to such written representations the certified audited, or unaudited financial statements of the franchisor if the use of the same is permitted by the commissioner under Wis. Adm. Code, section SEC 35.05,

(g) The franchisor's affiliation with any person or business entity, without disclosing at the same time orally the legal nature thereof or disclosing the legal nature of such affiliation immediately adjacent to any such written representations,

(h) The endorsement or approval of the franchise or its business by any person or business entity without disclosing, orally at the same time or immediately adjacent to any such written representations, the nature of such endorsement or approval and the compensation being given, if any, by the franchisor or the franchisees to such person or business for the making of such approval or endorsement,

(i) The date by which a prospective franchisee's enterprise will be totally operational in connection with the offer to sell or sale of a franchise without disclosing the basis on which that date has been determined or is estimated and the average elapsed time between the signing of franchise contracts and the commencement of conduct of business of the franchisor's other franchisees throughout the continental United States,

(j) The advertising support to be provided by the franchisee, and by the franchisor if such is the case, without disclosing the manner by which such monies of the franchisee and franchisor are to be raised and spent and the manner by which franchisees may obtain an accounting for such expenditures,

(k) The nature and number of the locations appropriate for the franchisee's enterprise, whether or not to be obtained by the franchisor, without disclosing by whom such sites are to be secured, the manner by which their procurement is to be financed, whether by the franchisor or by the franchisee, the source and terms for such financing, the relationship, if any, between such site procurement and the execution of a franchise agreement, with whom, if anyone, the franchisor has a binding obligation for the procurement of such locations, and whether use of such site by the franchisee will entitle the franchisee to become affiliated with any existing enterprise or will create an obligation on the part of the franchisor or franchisee to any third party,

(l) Any payment, giving of consideration, contract, release, or execution of any negotiable or other written instrument or portions thereof to be executed in furtherance of the consummation of a franchise agreement without disclosing the complete contents thereof and the significance of execution, tender, or delivery thereof in the franchise sale transaction,

(m) The willingness of other individuals to enter into a franchise agreement substantially similar to that being offered or sold without disclosing, at the same time orally or immediately adjacent to such written representations, the source of such information and the identity, including names and addresses, of such individuals,

(n) The total number of franchises substantially similar to that being offered or sold established or to be established in a geographical area without disclosing graphically the area discussed or without disclosing whether or not such franchises are operating or have conducted business as defined by Wis. Adm. Code, section SEC 31.01 (1),

(o) The qualifications or experience, if any, a potential franchisee should possess without disclosing what additional personnel will be required for operation of the franchisee's business if such qualifications are not possessed by the potential franchisee,

(p) The extent of training, supervision, and technical assistance, if any, to be provided by the franchisor under the franchise agreement without disclosing the frequency thereof, the cost of such training, supervision, or technical assistance to the franchisee, and the effect of failure of the franchisee to participate in the same in accordance with any provisions of the franchise agreement,

(q) Recovery of a portion or all of a franchisee fee or other investment without disclosing whether such franchise fee or other investment is secured or guaranteed and, if so, in what manner, or, if not secured or guaranteed, over what period of time, based on the actual income experience of other franchisees of the franchisor, the franchisee might expect to recover the franchisee fee or other investment although such disclosure required herein shall not in and of itself constitute a representation that the franchisee will recover his franchise fee or investment within the specified period of time,

(r) The application for a franchise agreement without disclosing that such document constitutes only an application and not the agreement by which such franchise is being or will be sold or consummated,

(s) Aid or assistance to be given by the franchisor to the franchisee in training, obtaining locations for conducting business, or in marketing the product or service of the franchisor without citing the contractual provisions in the franchise agreement obligating the franchisor to accomplish the same or if none, so stating to the franchisee prior to execution of the franchise agreement, or

(2) Makes any representation with regard to:

(a) Approval of or endorsement of a franchise or a franchisor by the Office of the Commissioner of Securities of the State of Wisconsin, the Wisconsin Department of Justice, or any agency of the State of Wisconsin or by any other public agency or employes thereof,

(b) A finding by any agency of any state or of any public agency or by its agents or employes that any contents of advertising is true and not misleading,

(c) The name of the State of Wisconsin or any agency thereof or the name of any public agency or any agents or employes thereof in connection with promoting, advertising, offering, or selling a franchise other than to state that compliance with the applicable laws has been accomplished and to demonstrate the same by a showing of copies of correspondence or official records to that effect, or

(3) Fails to make the following representations:

(a) When a relationship exists between the franchisor and any other person or business entity which has offered, is offering or will offer a franchise program substantially similar to that being offered or sold, to state the nature of such relationship and to disclose the similarity, if any, of the trademark or commercial symbol and production and marketing plan of the other person or business entity to that of the franchise being offered or sold,

(b) When there are other franchises which have been sold by the franchisor, to state the names and addresses of 1% or 5, whichever is greater, of other franchisees of a substantially similar type located in the State of Wisconsin, or if none therein, within the continental United States so that the same may be contacted by the prospective franchisee,

(c) When any closings, terminations, or refusals to renew of franchises of a substantially similar type being offered and sold have occurred within 12 months immediately preceding such offer or sale, to state the names and addresses of such franchisees which have gone out of business and the reasons therefore,

(d) Where purchase of goods, services, equipment, inventory or real estate by franchisees from designated sources including the franchisor, is required under the franchise agreement, to state;

(i) In the case of such sources other than the franchisor, the affiliation, if any, of the franchisor with such sources and,

(ii) The cost to the seller of such goods, services, equipment inventory or real estate if the source is affiliated with the franchisor, and

(iii) The prevailing market price, if any, for such goods, services, equipment inventory or real estate, and if none, an explanation as to the inability of the seller to determine and disclose the same, and

(iv) The manner, if any, in which the availability of such goods, services, equipment, inventory or real estate will be ensured by the franchisor or its affiliates under the terms of the franchise agreement, and

(e) Any representation required to be made by sections 553.22 (3) or 553.26 (1) through (22), Wis. Stats., or any disclosures referred to in subsec. (1) (a) through (s) of this rule which are part of the franchise agreement being offered or sold, or

(4) Misrepresents;

(a) That execution of any document in connection with the offer or sale of a franchise constitutes only an application for such franchise when, in fact, execution of the subject document or documents creates a binding obligation.

(b) The number of franchises of the franchisor which are identical in type which are conducting business or have conducted business within the meaning of Wis. Adm. Code, section SEC 31.01 (1) within a given area at any time.

(c) That the franchise agreement and all of its obligations is or are embodied in one or several documents presented to, made available to, or executed by the prospective investor when, in fact, the execution of additional documents or the giving by the franchisee of additional consideration is required for the purpose of the franchise or execution of some of such documents are not related to or necessary for the sale of such franchise.

(d) Any element of a franchise agreement or of the business of a franchisor required to be made by sections 553.22 (3) or 553.26 (1) through (22), Wis. Stats., or any disclosures referred to in subsec. (1) (a) through (s) of this rule.

Chapter SEC 35

GENERAL PROVISIONS

SEC 35.01 Examination expenses. The following amounts are prescribed for examination of various matters arising under ch. 553, Wis. Stats., as authorized by section 553.72 (4), Wis. Stats., and are chargeable to the applicant, or registrant and are payable unless otherwise provided at the time the application or notice is filed:

(1) Examination of registration matters:

(a) Application for opinion confirming exemption from registration under sections 553.22, 553.23, or 553.25, Wis. Stats., ----- \$50

(b) Application for interpretative opinions under chapter 553, Wis. Stats., ----- \$20

(c) Application for approval of written notice under section 553.51 (4), Wis. Stats., ----- \$20

(2) Examination of advertising:

(a) Advertising filed by a registrant pursuant to section 553.53, Wis. Stats., ----- \$5 per item but not exceeding an aggregate amount of \$150 per registrant in any one year

(b) Advertising filed by a person or applicant not a registrant pursuant to section 553.53, Wis. Stats., ----- \$10 per item but not exceeding an aggregate amount of \$150 Per Person or applicant in any one year

SEC 35.02 Advertising. (1) Filing; (a) The following advertising used in connection with the offer, to sell, sale or purchase of any franchise in this state is exempted from filing under section 553.53, Wis. Stats.:

(i) A prospectus used by a person other than the applicant in connection with the offer, or sale of a franchise for which an order of registration has been issued under section 553.29 (3), Wis. Stats.

(ii) Advertising which does no more than state from whom advertising or, in the case of a franchisor registered under section 553.26, Wis. Stats., a prospectus, may be obtained, identify the franchise offered for sale and state the franchise fee, if any, for such franchise and the name of the franchise or selling entity, and

(iii) Any other advertising which the commissioner may specify by order.

(b) All advertising required to be filed by a registrant or by any franchisor, person or applicant doing business within the State of Wisconsin subject to the scope of the chapter within the meaning of section 553.59, Wis. Stats., and required to be filed by virtue of sections 553.22 (4), or 553.26 and 553.53, Wis. Stats., shall be filed with the commissioner in duplicate not less than 5 days prior to the date of use thereof or such shorter period as the commissioner may permit, and shall not be used in this state until a copy thereof, marked with allowance for use, by the commissioner, has been received from the commissioner.

(c) The commissioner may, prior to use thereof in this state, request revision of advertising to reflect the requirements of sections 553.22 (3), 553.26, Wis. Stats., and the requirements of subsec. (2) of this rule by written notification of his objection to use of such advertising filed pursuant to section 553.53, Wis. Stats., and not exempted from such filing by this rule.

(2) Standards for advertising; (a) No advertising shall make reference to;

(i) The purchase or sale of a franchise as a safe investment, as free from loss or default, or as an assurance of earnings or profits.

(ii) Projections of operations or of income from the operation of any franchise unless based on past certified and audited financial statements except during the time preceding the first yearly report of operations of the franchisor as authorized under Wis. Adm. Code, sections SEC 34.02 (1) (d) or 35.05 or unless otherwise permitted by the commissioner, and then, only if a statement of the basis therefor as required by sections 553.22 (3) (m) or 553.26 (16), Wis. Stats., is disclosed therein.

(iii) Any opinion of counsel without stating the name and address of such counsel.

(b) All advertising shall make reference to:

(i) The name and address of the person using the advertisement or making the offer.

(ii) The commercial symbol of the franchisor.

SEC 35.03 Injunctions. In any injunctive proceeding under section 553.54, Wis. Stats., the commissioner may petition the court to order rescission of any sale or purchase of franchises determined to be in violation of chapter 553, Wis. Stats.

SEC 35.04 Administrative files. The information contained in any investigation files of the commissioner shall be kept confidential, unless the disclosure of such information is deemed by the commissioner to be in the public interest.

SEC 35.05 Financial statements. (1) All financial statements required by chapter 553, Wis. Stats., or rules adopted thereunder or utilized in connection with the offer to sell, sale, or purchase of a franchise within this state shall be:

(a) Prepared in accordance with generally accepted accounting principles applied on a consistent basis; and

(b) (i) in the case of financial statements of franchisors, the franchises of which are required to be registered under section 553.26, Wis. Stats., audited and certified by an independent certified public accountant, provided that this requirement may be waived by the commissioner in particular cases for a good cause shown and does not apply to interim financial statements unless otherwise required by the commissioner in particular cases, or

(ii) In the case of financial statements of franchisors exempt from registration under sections 553.22, 553.23 or 553.25, Wis. Stats., certified and audited by an independent certified public accountant unless such requirement be waived by the commissioner as not in the public interest or for the protection of investors.

(2) All unaudited financial statements when utilized, either when referred to orally or presented in writing, pursuant to subsec. (1) of this rule, shall be accompanied by an oral statement at the same time or disclosure, immediately adjacent to the use of such statements if in written form, of the following:

"THESE FINANCIAL STATEMENTS ARE PREPARED WITHOUT AN AUDIT. INVESTORS IN OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR EXPRESSED HIS OPINION WITH REGARD TO THEIR CONTENTS OR FORM."

SEC 35.06 Justification for definitional exceptions, exemptions from registration, and for the use of projections. In connection with any matter relating to the claim of an exception from a definition contained in section 553.03,

Wis. Stats., or in relation to the claim of an exemption from registration under sections 553.22, 553.23, or 553.25, Wis. Stats., or in connection with the use of projections under section 553.22 (3) (m) or section 553.26 (16), Wis. Stats., the commissioner may reasonably require such additional information from the applicant, claimant or interested person in order to enable him to determine the availability of such exception, exemption from registration, or basis for the use of projections and the availability such exception or exemption, or authority for the use of such projections shall not be confirmed by interpretative opinion under section 553.75 (5), Wis. Stats., until such information reasonably requested is received by the commissioner and a period of time, not to exceed a period of 15 days from the date of receipt of such material, shall have expired, unless a shorter period of time is permitted by the commissioner.

Chapter SEC 36

ADMINISTRATIVE PROCEDURE

SEC 36.01 Application for hearing. Any application or request for hearing shall be filed with the commissioner and shall be accompanied by a complete and accurate statement of the relevant facts. Upon receipt of any application or request for hearing, the commissioner shall promptly mail a notice of hearing unless he determines that the application is inappropriate or that the applicant is not an interested party.

SEC 36.02 Notices of hearing. (1) Notice of a hearing shall be mailed by the commissioner to all interested parties and shall state the date, time, place, issues and reasons for holding the hearing. An order for hearing shall be in the form of a notice and shall describe the purpose for such hearing with reasonable particularity. Any party who has received a notice of hearing may file a written answer thereto prior to the date set for hearing, or may appear at the hearing. If briefs or written arguments are presented, copies shall be served upon the commissioner and all interested parties at least three days prior to the date of the hearing.

(2) Mailings of Notices of Hearings Made under subsection (1) of this Rule are governed by section 553.58 (5), Wis. Stats.

SEC 36.03 Appearances and defaults. (1) An appearance at a hearing shall be made either in person or by a duly authorized representative.

(2) If a party who has received notice of a hearing fails to appear at the hearing, the commissioner may proceed with the hearing and, on the evidence presented, may make a decision and issue an order.

(3) An appearance at a hearing may be made either by submitting to oral testimony conducted by the commissioner or an employe designated by him or by the presentation of briefs or written arguments or by both, whether made in person by interested persons or by their duly authorized representatives.

SEC 36.04 Form and content of pleadings. All pleadings, briefs, answers, written arguments, and orders filed or issued in reference to any administrative proceeding under the Wisconsin Franchise Investment Law shall be captioned "Before the Commissioner of Securities, State of Wisconsin" and shall be entitled "In the Matter of (name of party), Petitioner or Respondent" as the case may be.

SEC 36.05 Prehearing conferences. Prehearing conferences may be held at the convenience of the parties and shall be conducted by the commissioner, or by an officer or employe designated by the commissioner, who shall keep and preserve a record of any agreement as to the issues or stipulation or admission of fact which may be made at such conference or conferences. Such record shall be attached to the file in memorandum form and constitute a part of the official record of the proceeding.

SEC 36.06 Stipulations. Parties to an administrative proceeding, by stipulation in writing filed with the commissioner or by statement in the record at the hearing, may agree upon the facts involved or any portion thereof, which stipulation may be used as evidence in the proceeding. The absence of participation of any named or interested party in such stipulation shall be noted by the commissioner by a statement in the record at the hearing.

SEC 36.07 Record of hearings. All testimony at a hearing shall be taken down by stenographic reporter, or by recording without stenographic reporter, and the transcript thereof, together with all exhibits, shall be a part of the official record of such hearing. Any party desiring a copy of such transcript shall so indicate and shall pay therefor the same fees as those of the official reporter of the Circuit Court for Dane County, Wisconsin.

SEC 36.08 Conduct of hearings. All hearings shall be conducted and presided over by the commissioner or any officer or employe designated by him to hear the matter. The public shall be admissible to the site of such hearings. Witnesses will not be excused during the testimony of other witnesses unless the commissioner deems the excusal of witnesses during testimony of other witnesses to be in the public interest and for the protection of investors.

SEC 36.09 Examination of witnesses. Witnesses may be examined at a hearing under oath or affirmation by the commissioner or by an officer or employe designated by him or by any interested party making an appearance in the proceeding.

SEC 36.10 Decisions and orders. (1) A decision or order following a hearing shall be promptly mailed by certified or registered mail to each interested party at his last known address of record and such mailing shall constitute notice in accordance with section 553.58 (5), Wis. Stats.

(2) Each order issued without a hearing under sections 553.24 or 553.28, Wis. Stats., shall be promptly mailed by certified or registered mail to each party named in the title to the order at his last known address or delivered to any such party by an officer or employe designated by the commissioner.

Chapter SEC 37

FORMS

SEC 37.01 Forms. (1) The following forms in compliance with the requirements of chapter 553 are prescribed for use in this state and may be obtained from the Office of the Commissioner of Securities, Box 1768, Madison, Wisconsin 53701;

FU-1 Application for Registration, Registration Renewal Statement, or Application to Amend Registration Statement.

FU-2 Uniform Consent to Service of Process.

FR-1 Order of Registration of Franchises.

(2) Any other application or notice may be filed containing the information specified in the applicable rule.